

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

HIGINIO BARRERA,

Petitioner,

vs.

BRIAN WILLIAMS, SR., et al.

Respondents.

Case No. 2:15-cv-01515-JCM-GWF

ORDER

Petitioner has filed an application to proceed in forma pauperis (#1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The court finds that petitioner is unable to pay the filing fee.

Petitioner has filed an ex parte motion for appointment of counsel (#2). Whenever the court determines that the interests of justice so require, counsel may be appointed to any financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt v. Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are not separate from the underlying claims, but are intrinsically enmeshed with them. Weygandt, 718 F.2d at 954. After reviewing the petition, the court finds that appointment of counsel is not warranted.

Petitioner has filed a motion to stay proceedings (#3) until the his state-court post-conviction habeas corpus proceedings have concluded. Those proceedings actually concluded around the same

1 time that he mailed his federal habeas corpus petition to this court. See Barrera v. State, 2015 WL
2 4386206 (Nev. App. July 14, 2015). This motion is moot.

3 Petitioner has filed a motion for leave of court to file a longer than normal petition (#4). The
4 court grants this motion. The court has reviewed the petition, and the court will serve the petition
5 upon respondents for a response.

6 IT IS THEREFORE ORDERED that the application to proceed in forma pauperis (#1) is
7 **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

8 IT IS FURTHER ORDERED that petitioner's ex parte motion for appointment of counsel
9 (#2) is **DENIED**.

10 IT IS FURTHER ORDERED that petitioner's motion to stay proceedings (#3) is **DENIED**
11 **AS MOOT**.

12 IT IS FURTHER ORDERED that petitioner's motion for leave of court to file a longer than
13 normal petition (#4) is **GRANTED**. The clerk of the court shall file the petition for a writ of habeas
14 corpus pursuant to 28 U.S.C. § 2254.

15 IT IS FURTHER ORDERED that the clerk shall add Adam Paul Laxalt, Attorney General
16 for the State of Nevada, as counsel for respondents.

17 IT IS FURTHER ORDERED that the clerk shall electronically serve upon respondents a
18 copy of the petition and this order. In addition, the clerk shall return to petitioner a copy of the
19 petition and this order.

20 IT IS FURTHER ORDERED that respondents shall have forty-five (45) days from the date
21 on which the petition was served to answer or otherwise respond to the petition. Respondents shall
22 raise all potential affirmative defenses in the initial responsive pleading, including lack of
23 exhaustion and procedural default. Successive motions to dismiss will not be entertained. If
24 respondents file and serve an answer, then they shall comply with Rule 5 of the Rules Governing
25 Section 2254 Cases in the United States District Courts, and then petitioner shall have forty-five
26 (45) days from the date on which the answer is served to file a reply. If respondents file a motion,
27 then the briefing schedule of Local Rule LR 7-2 shall apply.
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1 IT IS FURTHER ORDERED that any exhibits filed by the parties shall be filed with a
2 separate index of exhibits identifying the exhibits by number or letter. The CM/ECF attachments
3 that are filed further shall be identified by the number or numbers (or letter or letters) of the exhibits
4 in the attachment. The hard copy of any additional state court record exhibits shall be
5 forwarded—for this case—to the staff attorneys in Las Vegas.

6 IT IS FURTHER ORDERED that henceforth, petitioner shall serve upon respondents or, if
7 appearance has been entered by counsel, upon the attorney(s), a copy of every pleading, motion or
8 other document submitted for consideration by the court. Petitioner shall include with the original
9 paper submitted for filing a certificate stating the date that a true and correct copy of the document
10 was mailed to the respondents or counsel for the respondents. The court may disregard any paper
11 received by a district judge or magistrate judge that has not been filed with the clerk, and any paper
12 received by a district judge, magistrate judge, or the clerk that fails to include a certificate of service.

13 DATED: March 29, 2016.

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16 JAMES C. MAHAN
United States District Judge
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